

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

TELEMUNDO OF PUERTO RICO, INC.
and TELEMUNDO NETWORK GROUP,
LLC,

Civil No. 09-1261 (JAF)

Plaintiffs,

V.

UNIÓN DE PERIODISTAS, ARTES GRÁFICAS Y RAMAS ANEXAS,

Defendant.

OPINION AND ORDER

Plaintiffs, Telemundo of Puerto Rico, Inc. ("Telemundo PR") and Telemundo Network Group, LLC ("Telemundo Network"), seek to remove this case from the Bureau of Conciliation and Arbitration of the Puerto Rico Department of Labor and Human Resources ("Arbitration Bureau"), asserting federal jurisdiction under the Labor-Management Relations Act ("LMRA"), 29 U.S.C. § 185, and request a declaratory judgment against Defendant, Unión de Periodistas, Artes Gráficas y Ramas Anexas ("Unión"), pursuant to 28 U.S.C. § 2201 regarding the Arbitration Bureau's jurisdiction over the underlying labor dispute. (Docket No. 1.) Unión moves to remand and compel arbitration under 29 U.S.C. § 185 (Docket No. 16); Plaintiffs oppose (Docket No. 18).

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1 **I.**2 **Factual and Procedural Synopsis**

3 We derive the following facts from the parties' pleadings and
4 submissions. (Docket Nos. 1; 11; 23.) Telemundo Network is an
5 enterprise that broadcasts television programs from its place of
6 business in Florida. Telemundo PR is a wholly-owned subsidiary of
7 Telemundo Network that operates in Puerto Rico. Unión is a Puerto
8 Rico labor organization that represents some Telemundo PR
9 employees.

10 On September 23, 2005, Telemundo PR and Unión concluded a
11 collective bargaining agreement ("CBA") that governs the terms and
12 conditions of employment for Unión's members working for Telemundo
13 PR. (Docket Nos. 11; 23-2.) Article XL of the CBA expressly
14 provides for protection of employees against layoffs and against
15 the introduction of new technology by Telemundo PR. (Id.) Under
16 section 22 of article XL, Telemundo PR "shall exercise [its right
17 to introduce new technology] in compliance with the obligations
18 provided by [the CBA] and affecting the [least] number possible
19 of employees of the Appropriate Unit." (Id.) The following section
20 provides that affected employees must receive retraining. (Id.)

21 Under article XLI, the CBA also furnishes a complaints-and-
22 grievance procedure that governs all disputes between Telemundo
23 PR and Unión. (Id.) After taking certain preliminary steps, the

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1 parties must select an arbitrator from the Arbitration Bureau.
2 (Id.) Section 5 of article XLI provides: "The arbitrator's
3 decision . . . will be final and binding on the parties, as long
4 as it is in accordance with the law." (Id.) Section 6 of the same
5 article grants authority to the arbitrator to resolve disputes "in
6 accordance with the provisions of [the CBA]" without modifying it
7 in any way. (Id.) The subsequent section withholds from the
8 arbitrator disputes arising from the renewal of the CBA. (Id.)

9 On February 12, 2009, Unión filed a request with the
10 Arbitration Bureau to appoint an arbitrator to resolve a dispute
11 arising from the layoff of some Telemundo PR employees. (Docket
12 Nos. 1-6; 23-4.) The dispute relates to the transfer of certain
13 functions from Telemundo PR to Telemundo Network in the United
14 States mainland. (Docket No. 1.) This change is a business
15 decision by Telemundo Network, the parent entity, in order to
16 implement new technology. (Id.) Telemundo Network is a stranger
17 to the dispute between Telemundo PR and Unión, but the arbitration
18 may interfere with Telemundo Network's control over its
19 operations. (Id.)

20 On March 16, 2009, Plaintiffs petitioned to remove the
21 arbitration case to this court and sought a declaratory judgment
22 to clarify Plaintiffs' rights under the LMRA. (Id.) On May 14,
23 2009, Unión moved to remand the case and compel arbitration

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1 (Docket No. 16); Plaintiffs opposed on May 14, 2009 (Docket
2 No. 18).

3 **II.**

4 **Standard for Dismissal under Rule 12(b) (1)**

5 Under Federal Rule of Civil Procedure 12(b) (1), a movant may
6 challenge the court's subject-matter jurisdiction in either of two
7 ways: First, a movant may raise a factual challenge by
8 controverting the plaintiff's jurisdictional allegations when they
9 are distinct from the case's merits. Valentín v. Hosp. Bella
10 Vista, 254 F.3d 358, 363 (1st Cir. 2001). The court then addresses
11 "the jurisdictional claim by resolving the [predicate] factual
12 disputes." Id. Second, under a sufficiency challenge, the court
13 takes the plaintiff's "jurisdictionally-significant facts as true"
14 and "assess[es] whether the plaintiff has propounded an adequate
15 basis for subject-matter jurisdiction." Valentín, 254 F.3d at 363;
16 see Torres-Negrón v. J & N Records, LLC, 504 F.3d 151, 162-63 (1st
17 Cir. 2007). The party asserting jurisdiction bears the burden of
18 showing its existence. See Skwira v. United States, 344 F.3d 64,
19 71 (1st Cir. 2003).

20 A federal district court has an independent obligation to
21 review its subject-matter jurisdiction over all cases "even in the
22 absence of a challenge from any party." Arbaugh v. Y & H Corp.,
23 546 U.S. 500, 514 (2006); see Fed. R. Civ. P. 12(h)(3). We may

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order *sua-sponte* dismissal if it is evident that we lack the power to decide a case. See Arbaugh, 546 U.S. at 514. While prior notice to the plaintiff is ordinarily required, no notice is necessary “[i]f it is crystal clear that the plaintiff cannot prevail and that amending the complaint would be futile.” González-González v. United States, 257 F.3d 31, 37 (1st Cir. 2001).

III.

Analysis

Unión argues that we lack the competence to try this case and, thus, should remand and compel arbitration. (Docket No. 16.) Unión contends that its CBA with Telemundo PR is dispositive on the issue of substantive arbitrability under the LMRA. (*Id.*) For the following reasons, we agree that we lack the power to try the underlying labor dispute, and we further find that Plaintiffs are not entitled to declaratory judgment.

A. Substantive Arbitrability of CBA

Pursuant to the LMRA, federal courts generally have subject-matter jurisdiction to hear cases arising from alleged breaches of contracts between employers and labor organizations. 29 U.S.C. § 185. As a corollary, a party to a CBA may move to compel arbitration if the CBA provides for dispute resolution by arbitration. See Newspaper Guild of Salem v. Ottaway Newspapers, Inc., 79 F.3d 1273, 1279 (1st Cir. 1996).

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1 Four principles guide federal courts in assessing the
2 substantive arbitrability of a labor dispute: (1) "the parties
3 must have contracted to submit the grievance to arbitration";
4 (2) "the contract [must] provide[] for arbitration of the
5 particular grievance in question"; (3) "the court [must] not
6 decide the merits of the grievance while determining the
7 arbitrability of the dispute"; and (4) "if the contract contains
8 an arbitration clause, a presumption of arbitrability arises."¹

9 Id. (quoting Cumberland Typographical Union 244 v. Times, 943 F.2d
10 401, 404 (4th Cir. 1991)). The inquiry "is a matter of contract
11 construction" that "is a question of law for the court"; it
12 focuses on whether the CBA facially governs a claim. Id.

13 Applying these principles to the instant factual challenge,
14 the CBA between Telemundo PR and Unión expressly provides for
15 arbitration of labor disputes over the implementation of new
16 technologies. (Docket Nos. 11; 23-2.) Plaintiffs insist that the
17 present controversy relates to their implementation of new
18 technologies that requires the termination of positions at
19 Telemundo PR and the transfer of these positions to Telemundo
20 Network on the U.S. mainland. (Docket No. 1.) Accordingly, the

¹ We are perturbed by Plaintiffs' omission of the fourth principle of substantive arbitrability from their brief, as they treated the other three. (See Docket No. 18.) We warn counsel to observe their duty of candor to this tribunal, which includes the disclosure of controlling, adverse authorities on point. L. Cv. R. 83.5(a); Model Rules of Prof'l Conduct R. 3.3 (2002).

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1 present labor dispute is committed to arbitration, and we lack the
2 power to rule on the controversy. See Newspaper Guild of Salem,
3 79 F.3d at 1279.

4 **B. Declaratory Judgment**

5 **1. Telemundo PR**

6 As we lack the competence to hear the underlying dispute, we
7 cannot grant declaratory relief to Telemundo PR. The Declaratory
8 Judgment Act permits a federal court to declare the rights of
9 parties “[i]n a case of actual controversy within its
10 jurisdiction” as a form of remedy without creating an independent
11 cause of action. 28 U.S.C. § 2201. “The Act does not itself confer
12 subject matter jurisdiction, but, rather, makes available an added
13 anodyne for disputes that come within the federal courts’
14 jurisdiction on some other basis.” Ernst & Young v. Depositors
15 Econ. Prot. Corp., 45 F.3d 530, 534 (1st Cir. 1995). Our previous
16 finding against jurisdiction leaves Telemundo PR bereft of the
17 necessary foundation to request clarification of its rights under
18 the LMRA. See id. Therefore, Telemundo PR’s prayer for declaratory
19 relief must fail on the pleadings.

20 **2. Telemundo Network**

21 Furthermore, we find that Telemundo Network lacks standing to
22 petition for declaratory relief. Although the LMRA grants federal
23 jurisdiction to hear disputes between employers and labor unions

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2 over alleged breaches of contract, 29 U.S.C. § 185, the LMRA
3 defines employers to include only entities that employ workers and
4 their agents, id. §§ 142, 152. Plaintiffs aver that Telemundo
5 Network is an interested third party to the dispute between
6 Telemundo PR and Unión, and is not party to their CBA. (Docket
7 No. 1.) Thus, Telemundo Network is not an employer under the LMRA.
8 See 29 U.S.C. §§ 142, 152. Accordingly, Telemundo Network is not
9 entitled to declaratory relief pursuant to the LMRA because it has
10 pleaded itself out of court. See id. § 185; Ernst & Young, 45 F.3d
at 534.

11 **IV.**

12 **Conclusion**

13 For the reasons stated herein, we hereby **GRANT** Unión's motion
14 to remand and compel arbitration (Docket No. 16). We **REMAND** this
15 case to the Arbitration Bureau. We also **DISMISS** Plaintiffs' claims
16 for declaratory relief under the LMRA (Docket No. 1).

17 **IT IS SO ORDERED.**

18 San Juan, Puerto Rico, this 29th day of September, 2009.

19 s/José Antonio Fusté
20 JOSE ANTONIO FUSTE
21 Chief U.S. District Judge